

April 2, 2008

The Honorable James H. Harrison
Member, House of Representatives
Post Office Box 11867
Columbia, South Carolina 29211

Dear Representative Harrison:

We received your letter addressed to Attorney General Henry McMaster requesting an opinion on the following question:

Are 6% assessment ratio owners of owner-occupied residential property entitled to property tax relief (exempt from property taxes imposed for school operating purposes) as a result of the passage of Act Number 388 of 2006?

In addition to your request, you included a copy of a memorandum prepared by Watson V. Dorn analyzing Act 388 and arguing that such owners are entitled to tax relief under the Act.

Law/Analysis

In 2006, the South Carolina Legislature enacted the Property Tax Reform Act (the “Act”), which among other things exempts owner-occupied residential property from property taxes imposed for school operating purposes and replaces revenue lost from such an exemption with additional sales, use, and excise taxes. Under the Act, the revenue collected from the additional sales tax is placed in the Homestead Exemption Fund and distributed back to the schools in order to compensate for revenue lost due to the property tax exemption. As part of the Act, the Legislature amended section 12-37-220 of the South Carolina Code (Supp. 2007), which provides general exemptions from property taxes, by adding the following exemption:

(47)(a) Effective for property tax years beginning after 2006 and to the extent not already exempt pursuant to Section 12-37-250, one hundred percent of the fair market value of owner-occupied residential property eligible for and receiving the special assessment ratio allowed owner-occupied residential property pursuant to Section 12-43-220(c) is exempt from all property taxes imposed for

school operating purposes but not including millage imposed for the repayment of general obligation debt.

(b) Notwithstanding any other provision of law, property exempted from property tax in the manner provided in this item is considered taxable property for purposes of bonded indebtedness pursuant to Section 15 of Article X of the Constitution of this State.

(c) The exemptions allowed by this item may not be deleted or reduced except by a legislative enactment receiving a recorded rollcall vote of at least a two-thirds majority of the membership of each house of the General Assembly.

(emphasis added).

In interpreting this provision to determine whether or not six-percent assessment ratio owners are entitled to property tax relief, we employ the rules of statutory interpretation. According to our Supreme Court “[t]he cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature.” Chem-Nuclear Systems, LLC v. South Carolina Bd. of Health and Env'tl. Control, 374 S.C. 201, 205, 648 S.E.2d 601, 603 (2007).

If a statute’s language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and a court has no right to impose another meaning. The words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limit or expand the statute’s operation.

Strickland v. Strickland, 375 S.C. 76, 88-89, 650 S.E.2d 465, 472 (2007).

According to the plain language contained in section 12-37-220(47)(a) of the South Carolina Code, in order to receive the tax exemption on property taxes imposed for school operating purposes, the property must be “owner-occupied residential property pursuant to section 12-43-220(c).” Section 12-43-220(c) of the South Carolina Code (Supp. 2007) provides for certain property to be assessed at four-percent. According to section 12-43-220(c), in order for property to be assessed at four-percent rather than six-percent it must be established as the owner’s legal residence. Further, section 12-43-220(c)(1) states: “For purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.” Section 12-43-220(c)(2)(i) further states: “To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year.”

Mr. Dorn, in several memorandums accompanying your request, argues that the language included section 11-11-156(A)(1) of the South Carolina Code, as revised pursuant to the Act, provides support for his position that in addition to those property owners entitled to a four-percent assessment ratio, owners of owner-occupied residential property assessed at a six-percent ratio are also entitled to tax relief under the Act and are exempt from property taxes assessed for school operating millage.

Section 11-11-156 of the South Carolina Code governs the reimbursement to schools from the Homestead Exemption Fund. Mr. Dorn cites to section 11-11-156(A)(1) of this provision as it was originally phrased pursuant to the Act¹:

(A)(1) Beginning with fiscal year 2007-2008, school districts of this State must be reimbursed from the Homestead Exemption Fund in the manner provided in this subsection. The Comptroller General shall pay these reimbursements upon application of the school district and the reimbursements for fiscal year 2007-2008 shall be equal to the amount estimated to be collected or reimbursed in fiscal year 2007-2008 by the district from school operating millage imposed on owner-occupied residential property therein.

2006 S.C. Acts 3133 (emphasis added). Mr. Dorn interprets the phrase “owner-occupied residential property” to possibly include six-percent assessment ratio owners of residential property as well as four-percent assessment ration owners. He argues that if the owner of the six-percent property occupies the property and it is not rented or leased, then the property is “owner-occupied.” Mr. Dorn states in one of his memorandums that

Code Section 11-11-156 (added by Act No. 388, pt I, § 2, eff June 10, 2006) abolished residential property taxes for school operations on owner-occupied residential property; that beginning with fiscal year

¹ The Legislature amended section 11-11-156 several times in 2007 to create a tiered reimbursement schedule. See 2007 S.C. Acts 186, 557, 688. However, section 11-11-156(A)(1) of the South Carolina Code (Supp. 2007) continues to make reference to the fact that the reimbursement provided to school districts is based upon the amounts the district would have received had it collected property taxes on owner-occupied property. For example, section 11-11-156(A)(1) provides that the third tier of reimbursement is derived from revenue obtained from the additional sales tax and “consists of an amount equal dollar for dollar to the revenue that would be collected by the district from property tax for school operating purposes imposed to by the district on owner-occupied residential property for that fiscal year as if no reimbursement exemptions applied” Thus, based on our review of the current legislation and taking into account section 11-11-156 as it stands today, our opinion would not change.

2007-2008 the school districts of this State must be reimbursed from the Homestead Exemption Fund for the estimated amount that such school district would collect from property taxes on owner-occupied residential property; and that the tax bill for real property would show a tax credit for the said school operations tax.

Mr. Dorn further argues that section 11-11-156

does not require that owner-occupied residential property be the ‘legal residence’ or ‘domicile’ of the owners; that the Legislature increased the sales tax for the specific purpose of exempting ‘owner-occupied residential property’ from school operations taxes but left it on rental and commercial property; that this tax relief legislation is not analogous to the legislative requirement that residence must be your domicile or legal residence in order to qualify for the 4% assessment ratio versus 6% ratio (only one legal residence); and that such a position was not the intent and purpose of the Legislature.

In determining the intent of the Legislature with regard to the provisions cited above, the principles of statutory construction call for us to read the provisions of the Act together. Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989) (“In ascertaining [the Legislature’s] intent, statutes which are part of the same Act must be read together.”). However, as we noted previously, our courts hold that “[w]here the language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the Court has no right to impose another meaning.” Pee Dee Reg’l Transp. v. S.C. Second Injury Fund, 375 S.C. 60, 62, 650 S.E.2d 464, 465 (2007).

First, we disagree with Mr. Dorn’s assessment that section 11-11-156(A)(1) itself provides property owners with tax relief. Section 11-11-156 addresses the manner of distribution of revenue from the newly imposed sales tax to the various school districts based upon what they would have received had they collected property taxes for school operating millage on owner-occupied residential property. While this provision bases the amount of the distribution on how much the school district would have collected had it assessed owner-occupied residential property, it does not provide for the exemption of such property from property tax. To the contrary, in reading all the provisions of the Act together, we believe section 12-37-220(47)(a) provides for such an exemption.

Second, the plain language of section 12-37-220(47)(a) specifically limits this exemption to those property owners “receiving the special assessment ratio allowed owner-occupied residential property pursuant to Section 12-43-220(c) . . .,” which applies to only those establishing such property as their legal residence. Accordingly, from the plain language of section 12-43-220(c) we find the Legislature’s intention to limit the exemption from property taxes imposed for school operating purposes to owners who establish the property as their legal residence.

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Third, even section 11-11-156 makes reference to the fact that reimbursements are to be used to offset taxes on property assessed at four-percent. Section 11-11-156(C), dealing with the distribution of any balance in the Homestead Exemption Fund, states "Revenues received by the county must be used to provide a property tax credit against the property tax liability for county operations on owner-occupied residential property classified for property tax purposes pursuant to Section 12-43-220(c)." Therefore, it is our opinion that six-percent assessment ratio owners of owner-occupied property are not entitled to a property tax exemption for taxes levied for school operating purposes.

Conclusion

According to the plain language of section 12-37-220(47)(a), only those property owners establishing property as their legal residence and receiving a special assessment ratio of four-percent are entitled to a property tax exemption for property taxes imposed for school operating expenses pursuant to the Act. Thus, in answering your inquiry, six-percent assessment ratio owners of owner-occupied residential property would not be entitled to the property tax exemption for property taxes assessed for school operating purposes under the Act.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General